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creditors—the persons interested in the bankrupt estate, and in whose behalf, or in whose place the trustee is entitled to act." The Circuit Court of Appeals in the instant case followed the decision of *Carey* v. *Donohue* and also affirmed the holding of the District Court, that when recording is necessary as against lien creditors, one of the classes represented by the trustee, (BANKRUPTCY ACT, § 47a), there is a "requirement" under § 60a. Though the case does not actually decide that recording is "required" under § 60 if it is required as against "a judgment creditor holding an execution duly returned unsatisfied" or a general creditor, the other classes represented by the trustees, nevertheless, since no local statute is likely to require recording against such creditors without also requiring it against a lien creditor, practically the holding is that "if recording is required as against any of the classes referred to in § 47a (2), there is a "requirement" under § 60. Justice HUGHES, in *Carey* v. *Donohue,* though citing *Meyer Drug Co.* v. *Pipkin Drug Co.* (C. C. A. Fifth), 136 Fed. 396, as reaching a "different conclusion" from that reached in the sixth, seventh and eighth circuits, which he overrules, cannot be said thereby to sanction the rule laid down by the fifth circuit that "whether and to what extent a chattel mortgage given before but recorded within the four months' period is valid against a trustee, must be determined exclusively by the state law." (Remington § 1383). The statute in that case is identical with the instant one and the decision, if it followed the dictum in *Carey* v. *Donohue* or the holding in the instant case, would be reversed. On this point generally, see 14 MICH. L. REV. 578.

BILLS AND NOTES—PROVISION FOR ATTORNEY'S FEES—NOT CONCLUSIVE AS TO AMOUNT.—A stipulation in a note for 10% attorney's fees is not conclusive as to the amount due for such services. In an action at law upon the note the amount of a reasonable attorney's fee is a jury question. *Farmer's and Mechanic's Bank of Florence* v. *Whitehead,* (S. C. 1916), 89 S. E. 657.

As to the validity of such stipulations in a note for attorney's fees the courts are in irreconcilable conflict. The apparent weight of authority holds them to be valid and enforceable. *Dorsey* v. *Wollf,* 142 Ill. 589; *Jones* v. *Radatz,* 27 Minn. 240; *First National Bank* v. *Larson,* 60 Wis. 206; *Stanley* v. *Farmers Bank,* 17 Kan. 592; *Bowie* v. *Hall,* 69 Md. 433. But in many jurisdictions such stipulations are void by statute: (*Hartford Security Co.* v. *Eyer,* 36 Neb. —; *Churchman* v. *Martin,* 54 Ind. 380); as an evasion of the usury laws, (*Boozer* v. *Anderson,* 42 Ark. 167; *Meyer* v. *Hart,* 40 Mich. 517); as against public policy as a penalty or forfeiture, (*Witherspoon* v. *Musselman,* 14 Bush (Ky.) 214; *Bullock* v. *Taylor,* 39 Mich. 137; *Bank* v. *Pateet,* 74 W. Va. 511, 82 S. E. 332; *Rixey* v. *Pearre,* 89 Va. 113); as tending to encourage litigation and oppress the debtor, (*Tinsley* v. *Hoskins,* 111 N. C. 340). That such a stipulation does not affect the negotiability of the instrument is now definitely settled by the Negotiable Instruments Law. See 12 MICH. L. REV., 225. As to whether the amount stated in the stipulation is conclusive of the amount that may be recovered for attorneys' fees in suit upon the note, in those states which do hold that such provision is valid and

enforceable, there are three well defined lines of authority. (1) The amount or per cent stated is conclusive; such is a provision for liquidated damages and the holder need only aver the stipulation, the note itself being all the evidence required to support judgment for that amount. *Bank of Dallas* v. *Tuttle,* 5 New Mex. 427, 23 Pac. 241, 7 L. R. A. 445; *Bank* v. *Gay,* 114 Mo. 203, 21 S. W. 479; *Bank of Vicksburg* v. *Mayer,* 129 La. 981, 57 So. 308. (2) The amount or per cent stated is not conclusive and only a reasonable amount can be recovered. The stipulation amounts to a contract for indemnity and (a) the plaintiff must allege and prove the contract price of his attorney's fees, or in absence of a contract, a reasonable price. *Reed* v. *Taylor,* (Texas, 1910) 129 S. W. 864; *Camp, Glover & Co.* v. *Randle & Co.,* 81 Ala. 240, 2 So. 287; *Bank* v. *Wood,* 125 Tenn. 6, 140 S. W. 31; *Nat'l Bank* v. *Coleman,* 204 Fed. 24. (b) The plaintiff need not aver or prove the amount of such fees actually contracted for or paid in order to recover the amount stated in note, but the defendant in mitigation of damages may show they were less. *Kennedy* v. *Richardson,* 70 Ind. 524; *Stephenson* v. *Allison,* 123 Ala. 439, 26 So. 290; *Florence Oil Refining Co.* v. *Hiawatha Oil Co.,* 55 Colo. 378, 135 Pac. 454; *Bank* v. *Robinson,* 104 Tex. 166, 135 S. W. 372; *Utah Nat'l Bank* v. *Nelson,* 38 Utah 169, 111 Pac. 907; *Keenan* v. *Blue,* 240 Ill. 177, 88 N. E. 553. Oregon holds provisions for "reasonable attorney's fees" valid and will enforce them on proof by plaintiff (*Peyser* v. *Cole,* 11 Ore. 39, 4 Pac. 520) but refuses to allow any recovery where the stipulation is for a stated amount or per cent on the ground that such had grown into an oppressive abuse. (*Levins* v. *Briggs,* 21 Ore. 333, 28 Pac. 15). The weight of authority and better reason would seem to be with the principal case, in holding such to be an agreement to indemnify the holder. Where the stipulation is for a stated amount or per cent, and such is held conclusive of the amount recovered, regardless of the actual fees of the plaintiff, it leads to oppression of the debtor and partakes more of the nature of a penalty than of liquidated damages. *Campbell* v. *Warman,* 58 Minn. 561; *Tinsley* v. *Hoskins,* 111 N. C. 340.

BILLS AND NOTES—REQUISITES OF A QUALIFIED INDORSEMENT.—Payee wrote on back of a negotiable promissory note the words, "I transfer my right, title, and interest in same. J. M. B." *Held,* in suit on the note, that such is not a qualified indorsement and the payee is liable thereon as an ordinary indorser. *Copeland* v. *Burke,* (Okla. 1916), 158 Pac. 1162.

The words "I hereby transfer my interest in this note to ——, J. W. B." were indorsed upon the back of a promissory note. *Held,* that this was such an indorsement as to render indorser liable in a suit in the same action with the maker. *Hurt* v. *Wiley* (Ga. App. 1916), 89 S. E. 494.

It does not appear that the phraseology of the Negotiable Instruments Law as to qualified indorsements introduces any new rule on the subject. The holding of the above cases is sustained by the numerical weight of authority on the ground that in order for an indorser of a negotiable instrument to limit his personal liability thereon he must do so in words clearly expressing his intent. *Markey* v. *Corey,* 108 Mich. 184, 66 N. W. 493, 36 L. R. A. 117,